

**ABRAMS FENSTERMAN, LLP**

Seth L. Berman, Esq. (*admitted pro hac vice*)

sberman@abramslaw.com

3 Dakota Drive, Suite 300

Lake Success, NY 11042

Telephone: 516.328.2300

Facsimile: 516.328.6638

**HEFNER STARK & MAROIS, LLP**

Thomas P. Griffin Jr., Esq. (SBN 155133)

tgriffin@hsmlaw.com

2150 River Plaza Drive, Suite 450

Sacramento, CA 95833

Telephone: 916.925.6620

Facsimile: 916.925.1127

Attorneys for Plaintiff YELLOWCAKE, INC., and Counterdefendants  
YELLOWCAKE, INC., COLONIZE MEDIA, INC., and JOSE DAVID  
HERNANDEZ

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

YELLOWCAKE, INC., a California  
corporation,

Plaintiff,

v.

HYPHY MUSIC, INC.,

Defendant.

**Case No.: 1:20-cv-00988-JLT-BAM**

**DECLARATION OF SETH L.  
BERMAN IN SUPPORT OF  
PLAINTIFF AND  
COUNTERDEFENDANTS' RULE  
56 MOTION FOR SUMMARY  
JUDGMENT AND SUMMARY  
ADJUDICATION**

Judge: Hon. Jennifer L. Thurston  
Date: August 4, 2023  
Courtroom: Courtroom 4, 7th floor

1 HYPHY MUSIC, INC., )  
2 )  
3 Counterclaimant, )  
4 )  
5 v. )  
6 )  
7 YELLOWCAKE, INC., A CALIFORNIA )  
8 CORPORATION; COLONIZE MEDIA, )  
9 INC.; JOSE DAVID HERNANDEZ; and )  
10 JESUS CHAVEZ SR, )  
11 Counterdefendants. )

11 SETH L. BERMAN, declares as follows:

12 1. I am a partner in the law firm of Abrams Fensterman, LLP and I am  
13 admitted *pro hac vice* in connection with this matter to practice before this Court.  
14 (ECF 6). I am counsel of record for Plaintiff Yellowcake, Inc. (“Yellowcake” or  
15 “Plaintiff”) and Counterdefendants Yellowcake, Colonize Media, Inc., (“Colonize”)  
16 and Jose David Hernandez (“Hernandez”), and as such, I have personal knowledge of  
17 the facts and circumstances in this matter.

18 2. This declaration is being submitted in support of Yellowcake and  
19 Colonize’s Motion for Summary Judgment and Summary Adjudication pursuant to  
20 Federal Rule of Civil Procedure 56.

21 3. This declaration is based upon my personal knowledge obtained as  
22 attorney for Yellowcake and Colonize, as well as the Exhibits annexed hereto, the  
23 accompanying Memorandum of Points and Authorities, and all prior pleadings and  
24 proceedings had herein.

25 **FACTS & EXHIBITS**

26 4. For the sake of brevity and judicial economy, the undersigned restates the  
27 facts set forth in the accompanying Statement of Uncontested Facts, Memorandum of  
28 Points and Authorities and Declarations of Kevin Berger and Jose David Hernandez

1 and incorporates them as if fully set forth herein. 1

2 5. Attached hereto as Exhibits are true and correct copies of the documents  
3 referenced in the Memorandum of Points and Authorities (“MPA”) submitted  
4 herewith.

5 6. Attached hereto as Exhibit “A” is a copy of excerpts from the deposition  
6 transcript of Jose Martinez dated July 26, 2022.

7 7. Attached hereto as Exhibit “B” is a copy of the Asset Purchase and  
8 Assignment Agreement dated March 21, 2019 (Bates No. PFL000021-000040).

9 8. Attached hereto as Exhibit “C” is a copy of the email correspondence  
10 with The Orchard dated June 20, 2022 (Bates No. ORCHARD000068).

11 9. Attached hereto as Exhibit “D” is a copy of the royalty reports for Hyphy  
12 Music, Inc. extending to 2022 produced pursuant to subpoena from The Orchard  
13 together with Certification of Business Records dated April 29, 2022 (Bates No.  
14 ORCHARD001701).

15 10. Attached hereto as Exhibit “E” is a copy of Defendant/Counterclaimant’s  
16 Responses to Plaintiff/Counterdefendants’ First Set of Interrogatories dated March 31,  
17 2022 .

18 11. Attached hereto as Exhibit “F” is a copy of the email correspondence  
19 enclosing production pursuant to Plaintiff’s Request for Production to Defendant – Set  
20 One dated January 18, 2022.

21 12. Attached hereto as Exhibit “G” is a copy of  
22 Defendant/Counterclaimant’s Responses to Plaintiff/Counterdefendants’ First Set of  
23 Request for Production dated March 31, 2022.

24 13. Attached hereto as Exhibit “H” is a copy of  
25 Defendant/Counterclaimant’s Supplemental Responses to Plaintiff/Counterdefendants’  
26 First Set of Request for Production dated October 10, 2022.

27  
28 1 All capitalized yet undefined terms used herein have the same meaning ascribed to them in the  
accompanying Statement of Uncontested Facts.

1 14. Attached hereto as **Exhibit “I”** is a copy of the  
2 Defendant/Counterclaimant’s Responses to Plaintiff/Counterdefendants’ Second Set of  
3 Requests for Production dated November 28, 2022.

4 15. Attached hereto as **Exhibit “J”** is a copy of excerpts from the deposition  
5 transcript of Alfonso Vargas dated December 6, 2022.

6 16. Attached hereto as **Exhibit “K”** is a copy of excerpts from the deposition  
7 transcript of Domingo Torres Flores dated December 7, 2022.

8 17. Attached hereto as **Exhibit “L”** are copies of the cease and desist letters  
9 addressed to Alfonso Vargas and Domingo Torres Flores dated March 2, 2022 (Bates  
10 Nos. PLF000092-000095).

11 **WHEREFORE**, the undersigned respectfully requests that this Court grant  
12 Plaintiff/Counterdefendant Yellowcake, Colonize and Hernandez’s Motion for  
13 Summary Judgment and Summary Adjudication pursuant to Fed. R. Civ. P. 56,  
14 together with such other and further relief as this Court deems just and proper.

15 I declare under penalty of perjury under the laws of the United States that the  
16 foregoing is true and correct.

17 Dated: July 14, 2023

Respectfully submitted,

18 **ABRAMS FENSTERMAN, LLP**

19 By: /s/ Seth L. Berman

20 Seth L. Berman, Esq. (*admitted pro hac vice*)  
21 ***Attorneys for Plaintiff Yellowcake, Inc., and***  
22 ***Counterdefendants Colonize Media, Inc., and***  
23 ***Jose David Hernandez***  
24  
25  
26  
27  
28